IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DISTRICT

OurPet's Company, 1300 East Street Fairport Harbor, Ohio 44077 Plaintiff v. Loving Pets, Corp., 110 Melrich Road, Suite 1 Cranbury, NJ 08512	Case No. 1:15-cv-768 Judge Polster Magistrate Vecchiarelli

DEFENDANT LOVING PETS, INC.'S ANSWER, DEFENSES, AND COUNTERCLAIMS TO PLAINTIFF'S SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Defendant, Loving Pets, Corp. ("Loving Pets"), by its undersigned counsel, for its answer to the Second Amended Complaint for Patent Infringement ("the Second Amended Complaint") of Plaintiff OurPet's Company ("OurPet's"), states as follows:

THE PARTIES

1. Loving Pets lacks sufficient information to determine the truth or falsity of the allegations set forth in Paragraph 1 of the Second Amended Complaint, and therefore denies all of the allegations.

2. Loving Pets admits that it is a business entity located in New Jersey. Loving Pets denies all of the remaining allegations set forth in Paragraph 2 of the Second Amended

Complaint.

JURISDICTION AND VENUE

3. The allegations set forth in Paragraph 3 of the Second Amended Complaint constitute conclusions of law to which no response is required.

4. The allegations set forth in Paragraph 4 of the Second Amended Complaint constitute conclusions of law to which no response is required.

5. The allegations set forth in Paragraph 5 of the Second Amended Complaint constitute conclusions of law to which no response is required.

6. Loving Pets admits that it transacts business in the state of Ohio. Loving Pets denies that it supplies infringing pet bowls that are widely sold throughout the state at various big-box retailers. The remaining allegations set forth in Paragraph 6 of the Second Amended Complaint constitute conclusions of law to which no response is required.

7. Loving Pets admits that it contracts to supply goods in the state of Ohio. Loving Pets denies that it supplies infringing pet bowls that are widely sold throughout the state at various big-box retailers. The remaining allegations set forth in Paragraph 7 of the Second Amended Complaint constitute conclusions of law to which no response is required.

8. Loving Pets lacks sufficient information to determine the truth or falsity of the allegations that the Plaintiff, its witnesses and evidence are located within this District, and therefore denies all of these allegations. Loving Pets denies that any infringement on its part has occurred within this judicial district. The remaining allegations set forth in Paragraph 8 of the Second Amended Complaint constitute conclusions of law to which no response is required.

9. Loving Pets admits that it maintains a web site that permits users located in Ohio and elsewhere to store account information; register; access customer service; and order product

for shipment to Ohio.

10. The allegations set forth in Paragraph 10 of the Second Amended Complaint constitute conclusions of law to which no response is required.

11. Loving Pets lacks sufficient information to determine the truth or falsity of the allegations set forth in Paragraph 11 of the Second Amended Complaint, and therefore denies all of the allegations.

12. Loving Pets lacks sufficient information to determine the truth or falsity of the allegations set forth in Paragraph 12 of the Second Amended Complaint, and therefore denies all of the allegations.

13. Loving Pets lacks sufficient information to determine the truth or falsity of the allegations set forth in Paragraph 13 of the Second Amended Complaint, and therefore denies all of the allegations.

14. Loving Pets lacks sufficient information to determine the truth or falsity of the allegations set forth in Paragraph 14 of the Second Amended Complaint, and therefore denies all of the allegations.

15. Loving Pets lacks sufficient information to determine the truth or falsity of the allegations set forth in Paragraph 15 of the Second Amended Complaint, and therefore denies all of the allegations.

16. Loving Pets lacks sufficient information to determine the truth or falsity of the allegations set forth in Paragraph 16 of the Second Amended Complaint, and therefore denies all of the allegations.

17. Loving Pets lacks sufficient information to determine the truth or falsity of the allegations set forth in Paragraph 17 of the Second Amended Complaint, and therefore denies all

of the allegations.

18. Loving Pets lacks sufficient information to determine the truth or falsity of the allegations set forth in Paragraph 18 of the Second Amended Complaint, and therefore denies all of the allegations.

19. Loving Pets admits that U.S. Patent No. 8,973,529 ("the '529 patent") on its face is titled "Covered Bowls Such as Pet Food and Water Bowls;" on its face indicates an issue date of March 10, 2015; and on its face names Steven Tsengas as an inventor. Loving Pets denies that the '529 patent was duly and legally issued.

20. Loving Pets lacks sufficient information to determine the truth or falsity of the allegations set forth in Paragraph 20 of the Second Amended Complaint, and therefore denies all of the allegations.

21. To the extent Paragraph 21 of the Second Amended Complaint refers to or describes content of Exhibit 1 of the Second Amended Complaint, Exhibit 1 speaks for itself. Loving Pets denies all of the remaining allegations set forth in Paragraph 21 of the Second Amended Complaint.

22. Loving Pets denies all of the allegations set forth in Paragraph 22 of the Second Amended Complaint.

23. Loving Pets denies all of the allegations set forth in Paragraph 23 of the Second Amended Complaint.

24. Loving Pets denies all of the allegations set forth in Paragraph 24 of the Second Amended Complaint.

25. To the extent Paragraph 25 of the Second Amended Complaint alleges that Loving Pets requires authorization from Plaintiff to sell any Loving Pets product and/or to use

any patent allegedly owned by Plaintiff, Loving Pets denies these allegations. To the extent Paragraph 25 of the Second Amended Complaint alleges that Loving Pets infringes any patent allegedly owned by Plaintiff through the sale of any Loving Pets product, Loving Pets denies these allegations. Loving Pets denies any remaining allegations set forth in Paragraph 25 of the Second Amended Complaint.

26. Loving Pets denies all of the allegations set forth in Paragraph 26 of the Second Amended Complaint.

CLAIM NO. 1
(*Patent Infringement 35 U.S.C. § 271 et seq*.)

27. Loving Pets refers to and incorporates herein by reference all defenses and all response to allegations stated above as if fully set forth herein.

28. Loving Pets denies all of the allegations set forth in Paragraph 28 of the Second Amended Complaint.

29. Loving Pets admits that it sells its “Ruff-N-Tuff” product in various sizes. Loving Pets denies all of the remaining allegations set forth in Paragraph 29 of the Second Amended Complaint.

30. Loving Pets denies all of the allegations set forth in Paragraph 30 of the Second Amended Complaint.

31. Loving Pets denies all of the allegations set forth in Paragraph 31 of the Second Amended Complaint.

32. Loving Pets denies all of the allegations set forth in Paragraph 32 of the Second Amended Complaint.

33. Loving Pets denies all of the allegations set forth in Paragraph 33 of the Second Amended Complaint.

34. Loving Pets denies all of the allegations set forth in Paragraph 34 of the Second Amended Complaint.

GENERAL DENIAL

Except as expressly admitted herein, Loving Pets denies each and every allegation contained in Plaintiff's Second Amended Complaint.

DEFENSES

Pursuant to Federal Rule of Civil Procedure 8(c), and without assuming any burden that it would not otherwise bear, and reserving its right to assert additional defenses, Loving Pets asserts the following defenses to Plaintiff's Second Amended Complaint:

FIRST DEFENSE
(Failure to State a Claim)

A. Plaintiff's Second Amended Complaint fails to state a claim upon which relief can be granted against Loving Pets because Our Pet's has not alleged that Loving Pets had knowledge of the '529 patent prior to the filing of the original Complaint.

SECOND DEFENSE
(Non-infringement)

B. Loving Pets has not infringed and does not infringe the '529 Patent, either directly or indirectly, by inducement or contributorily, or literally or under the doctrine of equivalents because the accused Ruff 'N Tuff product of Loving Pets does not include one or more elements, or their equivalents, of each claim of the '529 patent.

THIRD DEFENSE
(Invalidity)

C. On information and belief, the '529 Patent is invalid for failure to satisfy the conditions of patentability as specified under one or more sections of Title 35 of the United States Code, including, without limitation, 35 U.S.C. §§ 101, 102, 103, or 112 (pre-AIA) because the claims of the ‘529 patent are anticipated by and/or obvious over the prior art; are indefinite as failing to inform, with reasonable certainty, those skilled in the art about the scope of the claimed invention; and are invalid as the ‘529 patent fails to correctly name the true inventors.

FOURTH DEFENSE
(Prosecution History Estoppel)

D. Plaintiff is estopped by reason of prosecution history estoppel from asserting infringement of the ’529 Patent under the doctrine of equivalents based on claim amendments made during prosecution, and under the doctrine of ensnarement.

FIFTH DEFENSE
(Adequate Remedy at Law)

E. Plaintiff is not entitled to injunctive relief because any alleged injury to the Plaintiff is not immediate and irreparable, and Plaintiff has an adequate remedy at law.

SIXTH DEFENSE
(Limitations on Damages)

F. Plaintiff’s claims for damages, if any, against Loving Pets are statutorily limited by 35 U.S.C. § 287.

SEVENTH DEFENSE
(Costs Barred)

G. Plaintiff is barred from recovering costs in connection with this action under 35 U.S.C. § 288.

EIGHTH DEFENSE
(No Exceptional Case)

H. Plaintiff cannot prove that this is an exceptional case justifying an award of attorneys’ fees against Loving Pets pursuant to 35 U.S.C. § 285.

NINTH DEFENSE
(Venue)

I. In the interest of justice, and for the convenience of the parties and the witnesses, venue is more appropriate in one or more other districts where this action may have been brought.

TENTH DEFENSE
(Laches, Waiver, Estoppel)

J. The claims against Loving Pets are barred, in whole or in part, by the doctrines of laches, waiver, and/or estoppel.

ELEVENTH DEFENSE
(Patent Misuse)

K. The ‘529 patent is unenforceable on the basis of patent misuse because Plaintiff’s infringement allegations are frivolous.

TWELFTH DEFENSE
(Lack of Standing)

L. Plaintiff lacks standing to sue for infringement of the ‘529 patent because Siddharth Modi, a co-owner of the ‘529 patent, is not a party to the present action.

M. Loving Pets reserves any and all rights to amend its Answer and Defenses to Plaintiff’s Second Amended Complaint and to add additional defenses as they become apparent.

LOVING PETS' COUNTERCLAIMS

Defendant/Counterclaimant Loving Pets, Corp. ("Loving Pets") asserts the following counterclaims against Plaintiff/Counterdefendant OurPet's Company ("OurPet's"):

NATURE AND BASIS OF ACTION

1. This is an action arising under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the United States Patent Act, 35 U.S.C. § 1 *et seq*. Loving Pets requests declarations: (i) that it does not infringe any valid, enforceable claim of U.S. Patent No. 8,973,529 (the "'529 Patent"); and (ii) that the '529 Patent is invalid.

THE PARTIES, JURISDICTION, AND VENUE

2. Loving Pets is a company organized under the laws of the state of New Jersey, having its principal place of business at 110 Melrich Road, Suite 1, Cranbury, New Jersey 08512.

3. On information and belief, OurPet's is a corporation organized under the laws of the State of Colorado, having its principal place of business at 1300 East Street, Fairport Harbor, Ohio 44077.

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, and 1338(a), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

5. This Court has personal jurisdiction over OurPet's by virtue of the fact that OurPet's has submitted to the jurisdiction of this Court by bringing this action.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b), although venue is more appropriate in one or more other districts where this action may have been brought.

FACTUAL ALLEGATIONS

7. Upon information and belief, OurPet's purports to be the owner by assignment of the '529 Patent. Upon information and belief, Siddharth Modi of New Delhi, India is a co-inventor and co-owner of the '529 patent.

8. Loving Pets does not infringe directly or indirectly, by inducement or contributorily, or literally or under the doctrine of equivalents, any valid, enforceable claim of the '529 Patent because the accused Ruff 'N Tuff product of Loving Pets does not include one or more elements, or their equivalents, of each claim of the '529 patent.

9. Upon information and belief, all claims of the '529 Patent are invalid for failure to meet the requirements of the Patent Act, 35 U.S.C. § 1 *et seq.*, including, but not limited to, 35 U.S.C. §§ 102, 103, and 112. The claims of the '529 patent are anticipated by and/or obvious over the prior art; are indefinite as failing to inform, with reasonable certainty, those skilled in the art about the scope of the claimed invention; and are invalid as the '529 patent fails to correctly name the true inventors.

COUNTERCLAIM I
(Declaratory Judgment of Non-Infringement)

10. Loving Pets realleges and reincorporates the allegations of Paragraphs 1 through 9 of its Counterclaims as if set forth herein in full.

11. There is an actual and justiciable controversy between the parties concerning Loving Pets' non-infringement of the claims of the '529 Patent.

12. Loving Pets is entitled to a judicial declaration that it has not and does not infringe directly or indirectly, by inducement or contributorily, or literally or under the doctrine of equivalents, any valid, enforceable claim of the '529 Patent.

COUNTERCLAIM II

(Declaratory Judgment of Invalidity of the Patents-in-Suit)

13. Loving Pets realleges and reincorporates the allegations of Paragraphs 1 through 12 of its Counterclaims as if set forth herein in full.

14. There is an actual and justiciable controversy between the parties concerning the validity of the patent asserted against Loving Pets for failure to meet the requirements of the Patent Act, 35 U.S.C. § 1 et seq., including, but not limited to, 35 U.S.C. §§ 102, 103, and 112 (pre-AIA).

15. Loving Pets is entitled to a judicial declaration and order that all the claims of the ’529 Patent are invalid.

DEMAND FOR JURY TRIAL

Loving Pets requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

WHEREFORE, Loving Pets requests judgment in its favor and against OurPet’s as follows:

(i) OurPet’s recovers nothing and its Second Amended Complaint be dismissed with prejudice;

(ii) The Court deny any injunctive relief in favor of OurPet’s and against Loving Pets;

(iii) The Court declare that Loving Pets has not and does not infringe directly or indirectly, by inducement or contributorily, or literally or under the doctrine of equivalents, any claim of the ’529 Patent;

(iv) the Court declare and order that all the claims of the ’529 Patent are invalid;

(v) The Court declare and order that the ’529 Patent is unenforceable;

(vi) The Court find this case to be exceptional pursuant to 35 U.S.C. § 285 and award Loving Pets its reasonable attorneys' fees in this action;

(vii) All costs be taxed against OurPet's; and

(viii) Loving Pets be granted such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: August 18, 2015

/s/ F. Michael Speed, Jr.
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Counsel for Defendant Loving Pets, Corp.

CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2015, the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's Electronic Filing System.

/s/ F. Michael Speed, Jr.
F. Michael Speed, Jr.